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No. 91-781

In The
Supreme Court of the United States
October Term, 1992

UNITED STATES OF AMERICA,

Petitioner,

v.

A PARCEL OF LAND, BUILDING, APPURTENANCES
AND IMPROVEMENTS KNOWN AS
92 BUENA VISTA AVENUE, RUMSON, NEW JERSEY,
AND BETH ANN GOODWIN,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

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ARGUMENT

This Supplemental Brief is respectfully submitted by counsel for Respondent Beth Ann Goodwin in order to cite new authority discovered after our Brief on the merits and to respond to certain factual arguments raised for the first time in the Reply Brief of the United States ("Rep. B.")¹.

¹ A Supplemental Appendix ("SA") is appended hereto to provide material from the record which answers certain of the government's new arguments.

The Meaning of the Term “Proceeds” Is Properly Before the Court, Since The Government’s Application of the Relation-Back Doctrine to Proceeds In the Hands of Innocent Owners Necessarily Raises the Issue.

The government asserts that Ms. Goodwin has never before contended that her residence does not qualify as drug proceeds within the meaning of 21 U.S.C. § 881(a)(6). (Rep. B. 2) This issue was raised in both the district court and the Third Circuit. In both courts, Ms. Goodwin contended that the property did not qualify to be forfeited as proceeds, since there was no proof connecting the property or the owner to drug transactions.

At the district court, the question of what constitutes demonstrable proceeds was addressed. After Brenna and Ms. Goodwin separated, she was left without his financial support. Ms. Goodwin took steps to remain financially stable and executed a mortgage on the property and later refinanced the mortgage. The district court began the proceedings by questioning whether the mortgage refinancing in 1988-89 (prior to the seizure in April 1989), which had increased the mortgage to \$363,000 and paid off the prior mortgage, thereby generating funds to Ms. Goodwin, created other forfeitable “proceeds.” (SA 2-3) The Court was also concerned as to whether the government contended that Ms. Goodwin’s furniture constituted proceeds. (SA 3-4) Counsel argued there was no demonstration that the money provided to Ms. Goodwin’s lawyer in 1982 from Shaun Murphy was traceable proceeds within the meaning of § 881(a)(6) at all. (SA 10-13) Arguing that the facts of this case warrant dismissal of the action, the Respondent’s briefs in both courts below specifically raised the claims that the property was owned by an innocent party (not the offender) and the property itself was not guilty of participating in drug offenses. (See SA 18-23, a portion of Respondent’s initial brief to the Third Circuit.) Similar arguments were presented in briefs to the district court.

The government contends that the definition and scope of the term “proceeds” is not encompassed in the question before this Court. (Rep. B. 2) The government seized and seeks to forfeit this home as “proceeds.” That was the premise of the

district court’s seizure order and opinion. (P. App. 25a) The government’s petition for certiorari and initial brief to this Court is replete with references to the concept of “proceeds.” In the petition for certiorari the government referenced the concept of proceeds approximately 30 times in the section designated “Reasons for Granting the Petition.” (Pet. for Cert. at 9-24) The second point in the government’s “Summary of Argument” in its initial brief asserts that “the relation-back doctrine applies with full force . . . [and] covers ‘proceeds’ traceable to a drug transaction.” (Br. 9) We submit that the extent of the government’s right to seize “proceeds” in the hands of innocent owners has always been at issue herein.

We ask this Court to consider the substantial impact on the issues herein created by the expansive interpretation of the term “proceeds” in § 881(a)(6) taken by the United States. Should this court agree with the government that the issues were inadequately raised below, we ask the Court to consider the impact nevertheless. Even when a litigant has waived certain issues, this Court has, on occasion, been willing to consider them when they are significant. *See Kamen v. Kemper Financial Services, Inc.*, 500 U.S. ___, ___, 111 S.Ct. 1711, 1718 (1991); *see also, United States v. Burke*, 504 U.S. ___, ___, 112 S.Ct. 1867, 1877 (1992) (Scalia, J. concurring); *Arcadia, Ohio v. Ohio Power Co.*, 498 U.S. 73, ___, 111 S.Ct. 415, 418 (1990).

“Ordinary” Remission Practices Should Not Alter the Applicable Constitutional Principles, If Properly Raised; However, These Issues Were Not Raised Below and Have No Factual Support in the Record.

The government raises for the first time in its reply brief the contention that it will “ordinarily remit” property to innocent owners. (Rep. B. 4 n.4, 12, 18) Remission was never raised in any form in the district court or the Third Circuit and there is no reference to remission in the opinions below since no remission argument was proffered by the government below.

Respondent and *amici* have pointed out the obvious hardship and inequity that the government would visit upon innocent owners who are unlucky enough to hold title to tainted assets. In response, the government claims, for the first time, that "the government does not *ordinarily* seek forfeiture of tainted assets in the hands of innocent third parties (Rep. B. 4, n.4); that "the government does not *ordinarily* seize 'tainted' assets from persons acquiring them through the ordinary course of business" (Rep. B. 18); and that "the government will *ordinarily* honor a request for equitable remission if the property interest was innocently acquired." (Rep. B. 18) (emphasis added).

Apart from the procedural defect of raising such a response for the first time in this Court and not below, these assertions have no support in the record. The government does not provide any documentary or regulatory basis for these statements. Innocence is not the determinative test under the Remission regulations which require that a petitioner prove no knowledge: (1) that the property was involved in any violation of law; (2) of the particular violation which subjected the property to seizure and forfeiture; and (3) that the user of the property had a record for violating the laws of the United States or any state for a related crime. The regulations also require that a petitioner satisfy the government's interpretation of the standard "that all reasonable steps to prevent illegal use of the property were taken." See 28 C.F.R. § 9.5(b) 2-5. Moreover, § 9.5(c) indicates that § 9.5(b) provides the minimum standards for remission and that discretion is still left to deny remission and to substitute "mitigation" which suggests some settlement for an innocent owner who satisfies all of 28 C.F.R. § 9.5(b) (e.g., ½ for the innocent owner and ½ for the Asset Forfeiture Division).

Reported cases reflect only those few forfeiture cases where a party has the financial ability to contest the seizure and/or forfeiture, and some cases suggest that the "ordinary" practices have failed to properly protect innocent third parties. In *United States v. Pole No. 3172, Hopkinton*, 852 F.2d 636 (1st Cir. 1988), the claimants provided money to a relative, Fogarty, who was allegedly involved in drugs. The

claimants, who were Fogarty's relatives, claimed that they should have had an ownership interest in the real property which was purchased by Fogarty. Fogarty had paid part of the monthly mortgage loan payments with alleged drug proceeds. At trial the jury held that the family members had no actual ownership interest in the property and therefore could not assert one against the government in the forfeiture action. The relatives were left to sue Fogarty for the return of their money. The Appellate Court was troubled noting:

The property was purchased with a downpayment constituting 20.8% of its value. Since that 20.8% interest was acquired two years before the earliest indication of drug activity there is absolutely no reason to believe it is forfeitable.

The government, however, tells us the property is forfeitable in any event because Fogarty has continued making mortgage payments over periods of time for which there are indications of drug dealing. We agree that the interest acquired as a result of mortgage payments made with the proceeds of drug transactions should be forfeitable. We do not believe, however, that forfeitability spreads like a disease from one infected mortgage payment to the entire interest in the property acquired prior to the payment. After all, only the actual proceeds of drug transactions are forfeitable.

Id. at 639-640. The briefs filed by the various *amici* strongly suggest that the "ordinary" remission practices are not as prevalent in the various Asset Forfeiture Sections throughout the country as government counsel believes.²

² See *United States v. Real Estate located at 116 Villa Rella Dr.*, 675 F. Supp. 645 (S.D. Fla. 1987), where the alleged drug dealers purchased property and transferred it to the Petries. The Petries claimed a debt still due to the drug dealers. 675 F. Supp. at 646. The Petries sold the allegedly tainted property and thereafter bought another property. 675 F. Supp. at 645. The government sought to seize this second property as proceeds. The Petries unsuccessfully moved to enter a counter-claim and enter pleadings and to limit the government's interest to the value of the original cash proceeds owned by the drug dealers. The Petries moved to bring the drug dealers into the case to resolve their debt to the drug dealers within the

Many states have now enacted statutes modeled after the various federal forfeiture statutes and covering "proceeds." E.g. N.J.S.A. § 2C:64-1(4).³ Some states may not adopt any remission policy, much less the "ordinary" remission practices set forth in the solicitor's brief. The pronouncements of this Court on due process as applied to the seizure practices will have an impact beyond the federal government's policies.

If, as a result of the assertions of ordinary remission practices, this Court does not consider the application of the constitutional principles to this case, there will be no protection for innocent owners whose cases are not deemed "ordinary" by the DEA agents responsible for assembling and presenting the pertinent facts to the remission offices as set forth in 28 C.F.R. § 9.4.

The government also contends that the constitutional arguments in Respondent's brief are not properly before the Court. (Rep. B. 1-2) The central issue before the Court is the statutory construction of § 881(a)(6). It is a fundamental tenet of statutory construction that, where reasonable, a legislative provision should be given an interpretation that is consistent with the Constitution. The government seeks to reinstate the district court decision where the home of an innocent owner was seized and deemed forfeit based on a conclusory allegation that it was purchased with downstream proceeds of an unlawful drug transaction and without any evidentiary hearing whatsoever.⁴ (Pet. App. 42a n.3) The government's position

confines of the same case. The Court granted the motions of the government to hold that the downstream proceeds could be seized and dismissed the owner's claims.

³ We ask this Court to take judicial notice of similar problems for innocent owners that now arise under state forfeiture practice. See, e.g., Sunday New York Times, September 13, 1992, "Protests Mount Over Police Confiscations." (SA24-25)

⁴ The government fails to meaningfully address the forfeiture cases involving the criminal offenses of treason and the constitutional prohibitions preventing the infliction of such forfeitures upon the innocent families of such offenders. (Rep. B. 2 n.1) Those cases and constitutional principles analyzed in our brief at 19-21 are as relevant to construing the application of the due process clause to § 881(a)(6) as are the government's citations to piracy, tax and customs forfeiture cases. (E.g., Rep. B. 15-17)

is that Congress intended to disenfranchise innocent owners when it approved the "relation back" clause and that innocent owners are to be treated with less protection than those alleged to be involved in the criminal offenses, where properties are forfeited only after a determination made beyond a reasonable doubt. We submit that § 881(a)(6) cannot be construed without considering the constitutional implications of the government's position.⁵

We submit that this Court should protect innocent owners at the outset by requiring the government to demonstrate that the *property* and/or its owners have some substantial involvement in the prohibited transactions when the forfeiture action is initiated. The government should be required to allege and demonstrate by probable cause that the owner is not an innocent owner.⁶ There should be no seizure in the first instance if such a demonstration cannot be made and is not pled in the complaint. Otherwise, innocent owners are put through prohibitive costs to recover their cars (vehicles which may be necessary for transportation to jobs) or even their homes. An individual faced with litigating against an adversary with virtually limitless resources will often simply default and abandon the property regardless of the merits of his or her position. The requirements that guilty knowledge be pled and proved at the outset would accord with due process

⁵ This should be contrasted with the procedure in *United States v. All Funds On Deposit at Merrill, Lynch, Pierce, Fenner & Smith*, ___ F. Supp. ___, 1992 WL 187755 (E.D.N.Y. August 5, 1992) at p. 4, where three days of evidentiary hearings occurred at the outset on the issue of probable cause to seize.

⁶ The pleadings in this case contrast with *United States v. Esposito*, ___ F.2d ___, 1992 WL 183200 (2d Cir. August 3, 1992) where the Second Circuit reversed a district court order obtained by the government which required an interlocutory sale of a home prior to a trial and a judgment of forfeiture. The government "alleged that the Princess property was constructed in 1985 with the proceeds of narcotics transactions and was later used to store narcotics for distribution. The forfeiture complaint also alleged that these events occurred with the knowledge of Klare Esposito; she asserts that she was innocent of any wrongdoing." *Id.* at p. 5. Ms. Esposito was the joint owner of the seized home. Those pleadings contrast with the pleadings filed herein, where there was no allegation that Ms. Goodwin was not an innocent owner at the date of the transfer and purchase in 1982.

and would effectuate the interest of Congress with respect to innocent owners.

Recently Decided Cases Provide Support for the Construction Proffered by the Respondent.

The government's case rests on the premise that the "relation-back" clause (18 U.S.C. § 881(h)) limits the scope of the "innocent owner" defense (18 U.S.C. § 881(a)(6)). A decision of the First Circuit filed after our merits brief reveals that the "relation-back" clause addresses other issues instead.

In *United States v. Bucuvalas*, ___ F.2d ___, 1992 WL 168339 (1st Cir. July 22, 1992), the defendant had sold certain real property which was subject to forfeiture pursuant to 18 U.S.C. § 1963(a)(2). After the jury returned a verdict of forfeiture, the proceeds of that sale, as well as the accrued interest, were forfeited to the United States. The First Circuit held that under the "relation-back" clause (18 U.S.C. § 1963(c)), title in the property vested in the United States upon the commission of the act giving rise to forfeiture. Thus, the interest belongs to the entity entitled to the forfeited principal. The "relation-back" clause (21 U.S.C. § 881(h)) does not determine whether a given property is forfeited, but rather impacts only upon how much of the property is forfeited after the forfeiture judgment is obtained. Thus, if indeed the property is forfeited from Ms. Goodwin, then the passive increase in value may accrue to the government. If the property is not forfeited because she is an innocent owner, the relation-back clause would not extinguish her claim.

The government claims we failed to address the "common law" background of the relation-back doctrine which they assert vests title as of the time of the act giving rise to forfeiture that is the date of the crime. (Rep. B. at 11)⁷ Since the government seeks to seize downstream proceeds, which were totally uninvolved at the date of the crime, the doctrine is inapplicable to such actions. Also, this Court has made

⁷ The government did not take notice of our brief at pp. 32-34.

clear from its earliest pronouncements that the rules of common law are inapplicable to statutory forfeitures. *United States v. Grundy and Thornburgh*, 7 U.S. (3 Cranch) 337, 350-51 (1806).

Section 881 provides the government with an option to seize either the drugs, the money derived from the drugs or various proceeds traceable thereto. (See Rep. B. 3) Section 881 is not self-executing but rather states that certain property shall be "subject to" forfeiture. When the government filed the Complaint, it elected at that point to attempt to seize Ms. Goodwin's house as downstream "proceeds" traceable to derivative proceeds of a drug transaction. In *Caldwell v. United States*, 49 U.S. (8 How.) 360 (1850), this Court held that when the statute permits forfeiture of goods or the value thereof, forfeiture is deemed as of the date of the filing of the Complaint.⁸ Accord *National Atlas Elevator Co. v. United States*, 97 F.2d 940, 942-945 (8th Cir. 1938); *See Motlow v. Missouri*, 295 U.S. 97 (1934). The government is now pursuing the proceeds in the hands of the drug dealer Brenna, as well. (JA 34-37) The conflicting elections, as the government seemed to recognize, create impediments for this case. (Rep. B. 36 n.13)

Recent cases reflect the judgment of other courts that the relation-back doctrine is not intended to extinguish the rights of innocent owners of proceeds. *United States v. Esposito*, *supra*, pp. 3-4. In *United States v. All Funds on Deposit at Merrill Lynch Pierce Fenner & Smith*, *supra*, the jury determined that one of the 22 claimants who participated in the joint trial and whose assets were seized had met its burden of proving that "it did not know . . . that the funds in question constituted the traceable proceeds of illegal drug activity and drug money-laundering transactions." The claimant needed to establish at trial only that it was unaware of the connection of the proceeds to the illegal acts. *Id.* at pp. 5 and 8.

⁸ The relation-back clause was enacted two years after the transfer to Ms. Goodwin; therefore, even if that clause was held applicable to the innocent owner defense, it should not affect Ms. Goodwin's title which vested two years earlier.

In *United States v. Delco Wire and Cable Co.*, 1992 WL 151762 (E.D.Pa. June 23, 1992), the government sought to invalidate a creditor's security interest created in 1987 on the theory that Delco's income since 1973 was the product of racketeering activity. The Court held that the government's forfeiture theory that cut off the interests of innocent owners with after-acquired rights was too broad, stating:

if the government's position were correct, the government could seek the return of the salary of any innocent employee of Delco or any other business found guilty of violations. If the employee paid for groceries and rent from those tainted funds, the government could seek forfeiture of those funds from the employee's grocer and landlord.

Id. at p. 5.

CONCLUSION

It is now ten years after the home was purchased. The government suggests that this case should return to the district court for further proceedings. (See Rep. B. 12 n.9) The government has virtually unlimited legal resources; private clients do not. We ask this court to terminate this action. The Third Circuit remanded this case *solely* for reconsideration of whether Ms. Goodwin's summary judgment and dismissal motions should have been granted. We ask this Court to modify the Circuit's order and dismiss the case since there was no demonstration in the context of the summary judgment motion that Ms. Goodwin was not an innocent owner. Moreover, the Complaint did not allege that Ms. Goodwin, the sole homeowner was not innocent; therefore, the Complaint was defective from the outset.

Respectfully submitted,

JAMES A. PLAISTED

SA1

[p. 1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CIVIL NO. 89-411

UNITED STATES OF AMERICA,

-vs-

A PARCEL OF LAND,
BUILDINGS, APPURTENANCES,
and IMPROVEMENTS, known as
92 Buena Vista Ave., Rumson,
New Jersey,

TRANSCRIPT OF
PROCEEDINGS

Motion

Defendant.

Newark, New Jersey
May 29, 1990

BEFORE:

THE HONORABLE HAROLD A. ACKERMAN,
U.S.D.J.

APPEARANCES:

SAMUEL A. ALITO, JR., UNITED STATES ATTORNEY

BY: NEIL R. GALLAGHER, ASSISTANT U.S. ATTORNEY

For the Plaintiff

WALDER, SONDAK, BERKELEY & BROGAN

BY: JAMES A. PLAISTED, ESQ.,

For the Defendant

Pursuant to section 753 Title 28 United States Code the
following transcript is certified to be an accurate record

as taken stenographically in the above entitled proceedings.

Thomas F. Brasaitis, C. S. R. Official Court Reporter

[p. 2] THE COURT: May I have the appearances, please.

MR. GALLAGHER: Neil Gallagher, Assistant U.S. Attorney, appearing for the plaintiff.

MR. PLAISTED: Jim Plaisted appearing for the claimant Beth Ann Goodwin, your Honor.

THE COURT: I've read all the papers in this case, and there were many, including depositions, et cetera. And I'm prepared to decide this very interesting case this morning.

I want to ask one question after - before inviting counsel to say anything they want to say if there's anything they haven't said that should be said. I noticed - there are two things I noticed: That in the winter of 1989, Mr. Plaisted, your client secured a mortgage for \$363,000 from a bank on the premises at 92 Buena Vista Road in Rumson, New Jersey; is that correct?

MR. PLAISTED: I believe so, your Honor. Whatever the papers show I believe is accurate.

MR. GALLAGHER: Your Honor is correct, that is as revealed by the title search.

THE COURT: What's the status of the government's position with respect to that money?

MR. GALLAGHER: Quite frankly, your Honor, that's something that I'm going to be taking up with my division chief to see what the government is going to do.

One of my impressions is that that money is proceeds [p. 3] just as the house is proceeds and is subject to seizure. Quite frankly, the two mortgages that have been taken out in the past two years total, I think, about \$500,000.

THE COURT: I didn't know about a second mortgage. What's the second mortgage? This is news to me.

MR. GALLAGHER: There was a mortgage taken out I believe it was in June, 1988, about eight months prior to this mortgage.

THE COURT: I missed that, I must tell you, Mr. Gallagher.

MR. PLAISTED: It's in Mr. Gallagher's last affidavit.

THE COURT: What are the total amount of mortgages?

MR. GALLAGHER: \$500,000, approximately, your Honor.

THE COURT: Now, next question I have to ask is: I noticed amongst your submissions, your latest submission, an advertisement in a newspaper, and I believe it was September of what, '89?

MR. GALLAGHER: September 9, 1989, your Honor.

THE COURT: In which Mr. PLAISTED's client, I presume, had a rather extensive ad listing a lot of very valuable objects of art as well as antique furniture for sale. Does the government make any claim with respect to those items? I don't know what you realized from the sale. It's not clear.

MR. GALLAGHER: At this time, your Honor, I don't believe I have a claim. I will not be asserting a claim based [p. 4] on what I know now.

THE COURT: Now, thirdly - there were three points, I said two - the last paragraph of I think it's your affidavit of certification says, it's your understanding that property is - has been listed for an alleged value - for asking price of \$850,000.

MR. GALLAGHER: That's correct, your Honor.

THE COURT: What's the status of that?

MR. GALLAGHER: I believe that the sale is pending.

MR. PLAISTED: Listing is pending with the realtor waiting for buyers.

THE COURT: There's no buyer at this point?

MR. PLAISTED: No.

THE COURT: All right. I was just curious in that regard.

Now, since it's your motion, Mr. PLAISTED, is there anything you want to add to the papers? And may I say that each side was extremely helpful in its - in their respective submissions.

MR. PLAISTED: Yes, your Honor, there is, and I would ask the Court's indulgence. I think I can do my remarks, absent questions, although I welcome questions and would prefer them, within 15 minutes, but I really would like the opportunity to address the Court.

THE COURT: Well, I gave you the opportunity.

[p. 5] MR. PLAISTED: I know, your Honor.

THE COURT: Speak.

MR. PLAISTED: You're always very patient.

THE COURT: Speak.

MR. PLAISTED: Your Honor, I represent Beth Ann Goodwin. That is her married name. She was married in - a long time ago. Her oldest child is almost 20. She was separated thereafter. She did not formally get divorced from her first husband whose name was Goodwin.

Late in the 1970s she established a relationship with a Joseph Brenna. They did not formally get married but it was a very close relationship as the documents and depositions revealed.

THE COURT: Says they had an intimate relationship.

MR. PLAISTED: No question.

THE COURT: That's what the papers say.

MR. PLAISTED: As is not uncommon in such situations, there were gifts from him to her. They lived together during certain periods of time. One of the gifts

was \$240,000 that was wired to her attorney in New Jersey.

THE COURT: Is that one from Shaun Murphy?

MR. PLAISTED: From a person who was handling investments for lots of people including Mr. Brenna, a Shaun Murphy.

THE COURT: Is he down in St. Thomas?

[p. 6] MR. PLAISTED: No, he's in the British Virgin Islands on Tortola.

THE COURT: I couldn't figure out if he was in the B.V.I. or Tortola or St. Thomas. He got around.

MR. PLAISTED: On Tortola.

THE COURT: On behalf of a lot of clients?

MR. PLAISTED: He had a great number of clients.

THE COURT: So he wired the money up to the Mason firm?

MR. PLAISTED: He wired the money up to specifically Mr. Davis in - I guess that's the firm.

MR. GALLAGHER: Yes, your Honor, Mason, Griffin and Pierson.

MR. PLAISTED: Her lawyer was Mr. Davis at the firm, and he was the one who handled the later use of that money to later buy a house she selected through our own realtor. She bought and he consummated the purchase in '82, and she lived in from '82 up through the present time except for a brief hiatus. Her children had

lived there with her. Mr. Brenna did live there from time to time during the period that she had a relationship with Mr. Brenna.

Her verified petition that has been filed as an exhibit in this case details when her relationship with Mr. Brenna ended. It was, I think, in either 1987, '86, somewhere in there. It's in the documents. It ended because, in part, there was some abuse as is - can happen in personal relationships [p. 7] between individuals.

THE COURT: Sometimes true love does not run smoothly.

MR. PLAISTED: Exactly so.

And sometimes in such circumstances it is not unusual for a woman in her position not to be fully familiar with his business dealings, so to speak, or his financial transactions. That isn't uncommon. I'm sure that is something that everybody, just through life experience, comes to recognize.

She lived up in New Jersey; she lived in her house; she maintained it; she improved it; she made decisions on it; and she is there to this day. In approximately April of '89, about seven years after the purchase, the house was seized.

There are two prongs to the complaint, and I would like to address both: The first is that specifically the proceeds are traceable to a drug transaction; and the second is that there was an isolated instance in 1986 when Mr. Brenna came to the property, met with somebody -

THE COURT: Was that for allegedly a \$30,000 deal?

MR. PLAISTED: - and gave them 30,000 in cash, not for a drug sale with drugs on the property. The government has said there was a transfer that somehow related facilitating some other transaction in some other spot. So there was, as the government alleges it, a transfer of \$30,000 in 1986.

Now, your Honor, I'm not here over the procedural defects, and I would say the Second Circuit decision is [p. 8] appropriate, but I am here over the merits. We made a number of motions on the merits as to the dismissal and entry of an order in our favor.

Now, I would like to approach the summary judgment first because it affects all of the other ones, and if you take the two prongs of what the government alleges, I'd like to address the first one first and point to the specific facts that relate to those two pieces.

The first is the money is traceable to a drug transaction back in 1982. Now, we deposed the case agent as much as the government would let us. What became clear from that deposition was that there was this transfer of money, that your Honor is obviously familiar with so I won't go through it, from Tortola.

Mr. Murphy was deposed and the case agent was deposed. Mr. Murphy said, I have no idea where this money came from and I have no information that suggests that this was from a drug transfer. The case agent, when asked about it, said the sum total of his knowledge relating to this being a drug transaction comes from a person named Mr. Mazacco that the government then -

THE COURT: Mr. Mazacco -

MR. PLAISTED: Mr. -

THE COURT: - who was an alleged informant?

MR. PLAISTED: He's an alleged witness, I don't know [p. 9] about informant. He is a person the government says they are going to produce in this case.

THE COURT: He's been indicted -

MR. PLAISTED: No.

THE COURT: Let me finish.

Mr. Brenna had pled guilty several years ago to a CTR, correct -

MR. PLAISTED: Something like that, yes.

THE COURT: - down in the Southern District of Florida.

And in April it is my understanding that he was - he has been indicted on drug charges in Florida in the United States District Court in which it is alleged that this - these premises were purchased with drug money.

MR. PLAISTED: What the government says in that indictment, they want to forfeit his interest in these premises.

THE COURT: But the reason they want to is because they say what they're saying here today; is that correct?

MR. PLAISTED: I have no idea. Your Honor, I know the indictment is filed. It doesn't go into evidence. They are saying they want to forfeit it.

THE COURT: But am I overstating it?

MR. PLAISTED: I assume that's their theory, Judge, but I don't know. I just don't know.

What I do know is what we have in the record here as to [p. 10] whether the money is traceable. As - they have a right to forfeit this on two grounds. One is traceable. If it's traceable, they can forfeit it.

We have two witnesses that are identified and deposed Mr. Murphy. Didn't depose Mr. Mazacco, but Mr. Jack Giacobbe, the agent, gave evidence as to what the basis is for saying it's traceable.

What he said, Judge, is that, at T-70 to 75, he talked about the drug transaction that he says may be related to this money. What he said specifically I ask your Honor to look at those precise pages.

Then there's another set of precise pages. He said, well, I understand there may have been a drug transaction in 1981 to '82. I don't know when. I don't know where. It was maybe in the northeastern United States. It was maybe in the southeastern United States. And I think it came from South America.

And it alleges, I guess, marijuana in the indictment.

THE COURT: From Columbia, isn't it alleged?

MR. PLAISTED: I don't know what the indictment says. I know that he said, I think it's from South America.

THE COURT: Well, Columbia is in South America.

MR. PLAISTED: Well, in his deposition I do know -

THE COURT: Didn't he say - we can take judicial notice Columbia is in South America.

[p. 11] MR. PLAISTED: No. You know what he said, how do you know it comes from South America?

Well, drugs come from South America.

Yes -

THE COURT: Some drugs do.

MR. PLAISTED: But in terms of evidence, he didn't have any.

Now, in terms of - we then got specifically to the question of traceable. And I ask your Honor to look at what he said, because it's his affidavit that covers the complaint in this case, at - from 139 to 147 of his deposition. And he was asked if he got documents that showed that Mazacco has any knowledge about Brenna's finances back then?

No, he doesn't have any knowledge.

Do you have any information about Mr. Brenna's finances?

No, I don't have any.

Do you know how much he got from this drug transaction?

No, I don't know if he got anything. I don't know what he got.

So, your Honor, all I am pointing out to you is that the person whose affidavit supports the complaint on the basis of the theory that this is traceable has no information that shows it's traceable. He says that Mazacco has none and Murphy said he has none and that leaves nobody else.

[p. 12] And so I ask that that portion of the complaint be ruled out on the grounds that there isn't any dispute of fact and they haven't put in anything and there just isn't any. I don't think they can, and that is why I would submit they haven't. But, in any case, as the pleadings stand now, there isn't any. And we examined the case agent on that precise situation and those were his answers.

On the issue - their other prong to this complaint is that there was a transaction in 1986, that your Honor alluded to, where Brenna comes from somewhere, he comes to the property - he is there from time to time because of this personal relationship - he meets and he supposedly gets \$30,000, presumably. I - gives, presumably, I guess, to Mazacco, he gives \$30,000 to somebody. That is a fee, the government says, ties into a drug transaction.

They don't say there's a drug sale there, they don't claim there is, and there's no evidence there was. That evidence and the allegations there - and we examined him again on whether Mrs. Goodwin, who owns the house and lives there and has always lived there, was she present during that.

He said he didn't have any information showing that she was a participant. He didn't have any information on that.

Did she know about it?

He didn't have any information on that other than the fact they had a personal relationship.

[p. 13] This agent thinks that because this woman had a personal relationship with Brenna, she is tabbed with whatever his illegal acts are.

I don't think the law says that. I think they have to have some evidence, and I would cite your Honor to a specific case on this other aspect of the - the case I would cite is a Supreme Court case. It's at 401 U.S. 715. It's United States versus Coin and Currency. It's a seizure type case. Relates to IRS seizures. But our Supreme Court in it indicated two things: They indicated - and there are other lower level decisions. I have a F.Supp. I think we cited in our briefs that say, look, if you're going to seize property, there has to be a significant connection of the owner's illegal acts to the property.

* * *

[p. 19] THE COURT: I mean, I could go on and on. But is it a fair supposition that with respect to Murphy he strongly smelled that Mr. Brenna was not a legitimate businessman asking him to do legitimate things? Is that a fair inference -

MR. PLAISTED: Well -

THE COURT: - to draw from Murphy's testimony?

MR. PLAISTED: That he had questionable financial and other dealings? I think it's fair to suggest that when they're transferring cash.

The man - the government's witness, Mr. Murphy, out and out said, he had - quote at P-21, Line 11 - no facts to show that Brenna ever gained any money from drug transactions. That's their witness.

Now, if your Honor is saying, gees, these transactions look odd, I would agree.

THE COURT: I didn't say they looked odd, I'm saying that from Murphy's standpoint, they looked odd enough to him so he didn't want to touch it with a ten foot pole except to take the guy's money.

MR. PLAISTED: Murphy had 600 clients that he dealt with in the same way.

THE COURT: A lot of business down there, he told us, which invites the interest, apparently, of the United States [p. 20] government and Scotland Yard, I believe, in reading the deposition carefully.

MR. PLAISTED: Your Honor, I -

THE COURT: Lot of business down there.

MR. PLAISTED: Fortunately, I don't have to defend Brenna, and don't want to because that isn't my case. It doesn't - I could concede here, for the purpose of argument, that Brenna was a drug dealer and I wouldn't be in any worse shape, but I don't have to.

THE COURT: You would not?

MR. PLAISTED: I don't think so.

THE COURT: Mr. PLAISTED -

MR. PLAISTED: I don't think so.

THE COURT: - step back a moment, think about that last statement.

MR. PLAISTED: All right.

THE COURT: If I would concede he was a drug dealer, -

MR. PLAISTED: I don't, but if I did -

THE COURT: - you wouldn't be in any worse shape?

MR. PLAISTED: I don't think so, because, your Honor, think about it for a minute. The government - this is a tough statute. There are specific requirements put on the government in order to enforce this statute against somebody like Mrs. Goodwin. They have to show that the money is traceable to a drug transaction. Just because they allege, and even if they [p. 21] convict him that he was at one time a drug dealer, doesn't mean that this is traceable and they can take her house that was purchased eight years earlier, perhaps before he even started being engaged in any drug transactions.

For example, if he had a boat business, as the government's witness suggests that he did, where he's buying and selling boats, if the money comes from another legitimate transaction, the fact that he happened to dabble in marijuana doesn't mean they can go seize this woman's house.

THE COURT: Okay.

MR. PLAISTED: And, so, no, I don't think the - the fact that he is indicted doesn't have any impact here. She isn't - they concede she isn't. That's our issue, not him. I don't have to defend him. I don't want to defend him, fortunately.

So I think I'm entitled to the judgment because she isn't involved, because the property isn't involved, and they haven't produced any evidence to show it is and we have produced a lot to show it isn't; namely, her affidavits.

In terms of the - I would just point out to your Honor that the original complaint, if one looks at it, before you have a seizure in the first instance, if you go through a trial, et cetera, you have to show probable cause.

This agent has now been deposed. What is crystal clear is that, for the critical parts of his affidavit, he didn't have [p. 22] facts to support them. For example, was the money traceable? He doesn't have any, and he said so.

His complaint that he swore to said otherwise. Does he - anyway, I just point that out because if we get to the first step, I think I'm in on the other ground.

But let's say -

THE COURT: What about the government's request for a stay here?

MR. PLAISTED: All right.

Now, as to -

THE COURT: Can I shift you into that gear?

MR. PLAISTED: Sure.

As to the stay, I would ask your Honor - there's a Tenth Circuit case that talks about - 801 F.2d 1210 case, United States versus Canadian Currency. It's the case I rely on to say look at this complaint, it's totally inaccurate [sic inadequate] under the standards of that case. You should dismiss it for that reason as well.

But as to the stay, it is interesting, I think. It has an impact in that regard. In that case they talk about the protections to a criminal defendant who is having his property seized. And what they point out is that when Brenna has his property seized, or any other criminal defendant, they have a right to hearings as to whether there's a likelihood of a success, they have a right to have it in short order and then [p. 23] they have a criminal trial coming up. And all of those things happen rapidly.

And I would just point out that in this case, first, I don't think the stay provisions that are cited apply because she hasn't been charged at all. Second, if she was, she would have had greater protection than the government is saying now, as I understand it from my last conversation with - I called - the U.S. Attorney in charge of the criminal case called me, and -

THE COURT: Where? You mean in Florida?

MR. PLAISTED: Yes. And with the lawyer who has defended Mr. Brenna in the past.

The last I heard, Brenna has not been arrested and is a fugitive. And so -

* * *

**Portion of Initial Brief for Respondent
Submitted to the Third Circuit**

* * *

POINT II

**THE FINDINGS AS A MATTER OF LAW THAT THE
CLAIMANT IS NOT AN INNOCENT OWNER ENTI-
TLED TO KEEP HER HOUSE SHOULD BE VACATED
AND REVERSED.**

The trial court ruled after a review of depositions and affidavits that this claimant could not qualify as an "innocent owner". The Court held: (1) that probable cause was established that this party was purchased with money traceable to drug proceeds; and (2) that the claimant could not qualify as an innocent owner since the transfer of funds to her was not for value. However, the district court made no finding that the government established probable cause demonstrating that the claimant was substantially involved in the illegal activity or that the property itself was substantially involved in the illegal activity. We submit it was required to do both before shifting the burden of proof. There was no basis to find that the claimant was anything other than innocent in this regard since there were no allegations or proofs that she was involved in illegal drug activity.

**A. Since The Government Failed To Prove That The
Claimant Was Involved In Drug Transactions The
Complaint Should Be Dismissed.**

The forfeiture of a citizen's home when there is no allegation that the citizen significantly participated in a criminal enterprise should be prohibited. In *United States*

v. United States Coin and Currency, 401 U.S. 715 (1971), the Supreme Court construed similar IRS forfeiture statutes:

[A]lthough it is true that the [forfeiture] statute does not specifically state that property shall be seized *only* if its owners significantly participated in the criminal enterprise, we would not readily infer Congress intended a different meaning. (emphasis added).

401 U.S. at 719. See also, *Suhomlin v. United States*, 345 F. Supp. 650, 654 (D.Md. 1972).

The government sought to satisfy this element in the forfeiture complaint by the conclusory allegation that the claimant was not the true owner of the property but rather a nominee for Brenna. The district court did not rely on this conclusory allegation or make a finding that there was probable cause to believe it for good reason. Giacobbe stated that no one ever told him the claimant was an nominee (e.g., A384; 414). Giacobbe's only basis for alleging that the claimant was a nominee was her immunized statement where she answered questions as to the marital type relationship she maintained with Brenna (A421-22 and 455 *et seq.*). Since there was no evidence she was a nominee for Brenna and since there is no allegation that she was involved in the drug activity the complaint should have been dismissed.

B. Since The Government Failed To Prove That The Property Was Substantially Involved In Drug Transactions, The Complaint Should Have Been Dismissed.

As a precondition to forfeiture the government should be required to prove that the homeowner participated in the illegal activity and that the property has a substantial connection to the illegal activity. Other circuits ruling on this issue have mandated that the government provide evidence of "a substantial connection between the property to be forfeited and the underlying criminal activity" prior to sanctioning forfeiture. See *United States v. Property in Greene and Tuscaloosa Counties*, 893 F.2d 1245, 1249 (11th Cir. 1990); *United States v. Santoro*, 866 F.2d. 1538, 1542 (4th Cir. 1989); *United States v. One 1986 Nissan*, 895, F.2d, 1063 (5th Cir. 1990); *United States v. Padilla* 888, F.2d. 642 at 643 (9th Cir. 1989). The district court did not specifically find that there was a substantial connection between the real property and any drug activity.² Instead the court presumed that since the

² There is a second aspect to the Complaint which was specifically not relied upon by the district court in holding that probable cause existed to forfeit the property. The allegation is that a \$30,000 payment was made on the premises of the property in December 1986 to a crew member of a smuggling venture. There is no claim or evidence that drugs were on the property. Brenna had no prior criminal drug record (A372). No drug paraphernalia was ever found on the property. There is no claim that the claimant viewed or personally participated in this alleged transfer. (A389-92) There is no identification of any drug transaction to which the \$30,000 is allegedly related nor has the method of payment i.e., transfer of checks, securities or cash ever been identified. That is an inadequate connection of the

government had established by "probable cause" that the \$216,000 wired to claimant's attorney was allegedly traceable to drugs the property should be forfeited. (A22) In essence, the Court held that the purchase alone with such funds satisfied the substantial connection requirement.

This case differs substantially from other cases where the government has sought to seize cash or real property inasmuch as the government customarily establishes that the owner was involved in drug activity as was the property. Other cases such as those cited by the district court at A231 where (1) the money is involved in a identifiable drug sales (2) drugs or drug paraphernalia is found on the scene or (3) where the Columbian nationality of couriers of cash involving numerous cash transactions may warrant an inference that the money is derived from drug transactions. In this case there were no "Columbian couriers". There were no drugs or drug paraphernalia found at the home. There were only two transfers on money in an area of the Caribbean known to attract funds for tax avoidance reasons. In fact, the volume of Murphy's business suggests that he was shielding assets for tax purposes as well as performing investment functions for numerous American and foreign nations [als. in *Greene*, *supra*]. The court refused to allow a forfeiture action based on conclusory allegations, in the Complaint, that [P]ate, a convicted drug trafficker, had

property to a drug transaction to warrant forfeiture and the district court did not identify this allegation as a basis for its ruling, presumably for these reasons. Additionally, the only evidence as to this transfer is the hearsay from the informant Mazaccco, whom the government would not produce.

provided the funds in cash for the purchase of the seized bulldozer in the name of others. [P]late's prior drug activity and alleged practice of providing cash for such purchasers were deemed to be insufficient. *See United States v. One 1976 Ford Pickup*, 769 F.2d 525 (8th Cir. 1985) (where the pleadings merely alleged that the property was purchased with cash and placed in the name of a person other than the cash bearer, such pleadings standing alone were inadequate to sustain a forfeiture); *See United States v. \$38,000 in United States Currency*, 816 F.2d 1538 (11th Cir. 1987).

Courts have not allowed forfeitures where autos have been used in connection with illegal activities but drugs have not been present in the vehicle. *See e.g., United States v. One 1972 Datsun Vehicle*, 378 F. Supp. 1200, 1203 (D.N.H. 1974). *See also, United States v. Plymouth Coupe*, 182 F.2d 180 (3d Cir. 1950) (where vehicle used only to transport the owner to the site of the illegal operation was not held to be subject to seizure); *See also Simpson v. United States*, 272 F.2d 229 (9th Cir. 1959); *United States v. Lane Motor Company*, 344 U.S. 630 (1953); *Platt v. United States*, 163 F.2d 165 (10th Cir. 1947). Since the government has not shown by probable cause that the property was used in the drug trade the action should be dismissed. Forfeitures are not favored and should only be enforced when they are within the spirit and the letter of the law. *United States v. One 1936 Model Ford Coach*, 307 U.S. 219, 226 (1939). Since the government did not make a showing that the owner was involved in the drug transaction nor that the property was adequately involved the Complaint should be dismissed.

C. Even if The Government Satisfied Its Burden of Proving That All The Elements of Its Case Were Satisfied, The Innocent Owner Disqualification Should be Vacated.

The district court also held that claimant's innocent owner claim was deficient as a matter of law since the \$216,000 which she used to purchase the property was not given to her for fair value. We submit that whether a gift of funds to a marital type partner or a spouse is for fair value is a question for the fact-finder, i.e., the jury, and is not determinable as a matter of law.

SUNDAY, SEPTEMBER 13, 1992

Section 13

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Protests Mount Over Police Confiscations

By JAY ROMANO

LAWYERS, legislators and civil liberties groups are demanding major changes in a state law that gives the police broad powers to confiscate money, personal property and real estate from people charged with crimes.

Law-enforcement officials say that the law, known as the forfeiture statute, is a potent weapon in the fight against crime, particularly drug trafficking, because it deprives criminals of the tools of their trade, particularly their cars. The sale of confiscated property has also yielded \$83 million since the passage of the statute in 1986, a boon for increasingly tight police budgets.

But critics say the law has led to violations of constitutional rights, to

penalties that are greatly disproportionate to the crime and to the extraction of guilty pleas from defendants who might otherwise plead not guilty.

"I don't think there's one criminal defense attorney in the state who isn't outraged at this forfeiture law," said William J. DeMarco of Wayne, a criminal-law specialist. "The state should not be able to take things and

then say, 'We've got them; now you've got to fight to get them back.'"

Two measures have been introduced in the Legislature that would have the effect of changing the law, and the American Civil Liberties Union is preparing to challenge the statute in the courts. Robert T. Winter, director of the Division of Crimi-

nal Justice in the State Attorney General's office, said new regulations governing enforcement of the law would be proposed by his office this month.

Under the statute, the police can confiscate any property that they have reason to believe has been used

in the commission of a crime or the proceeds of a criminal activity. That property has included businesses, bank accounts, cash, houses, furniture, boats and even vacant land.

In Sussex County, for example, the police confiscated an entire house that they said had been used to store items stolen from residents of the area. The house was ultimately returned to the owners after they pleaded guilty to the charges and paid a

fine. In Monmouth County, officials seized office furniture, desks, stationery, telephones, a copy machine and other furnishings from a home in which a man was charged with practicing psychiatry without a license.

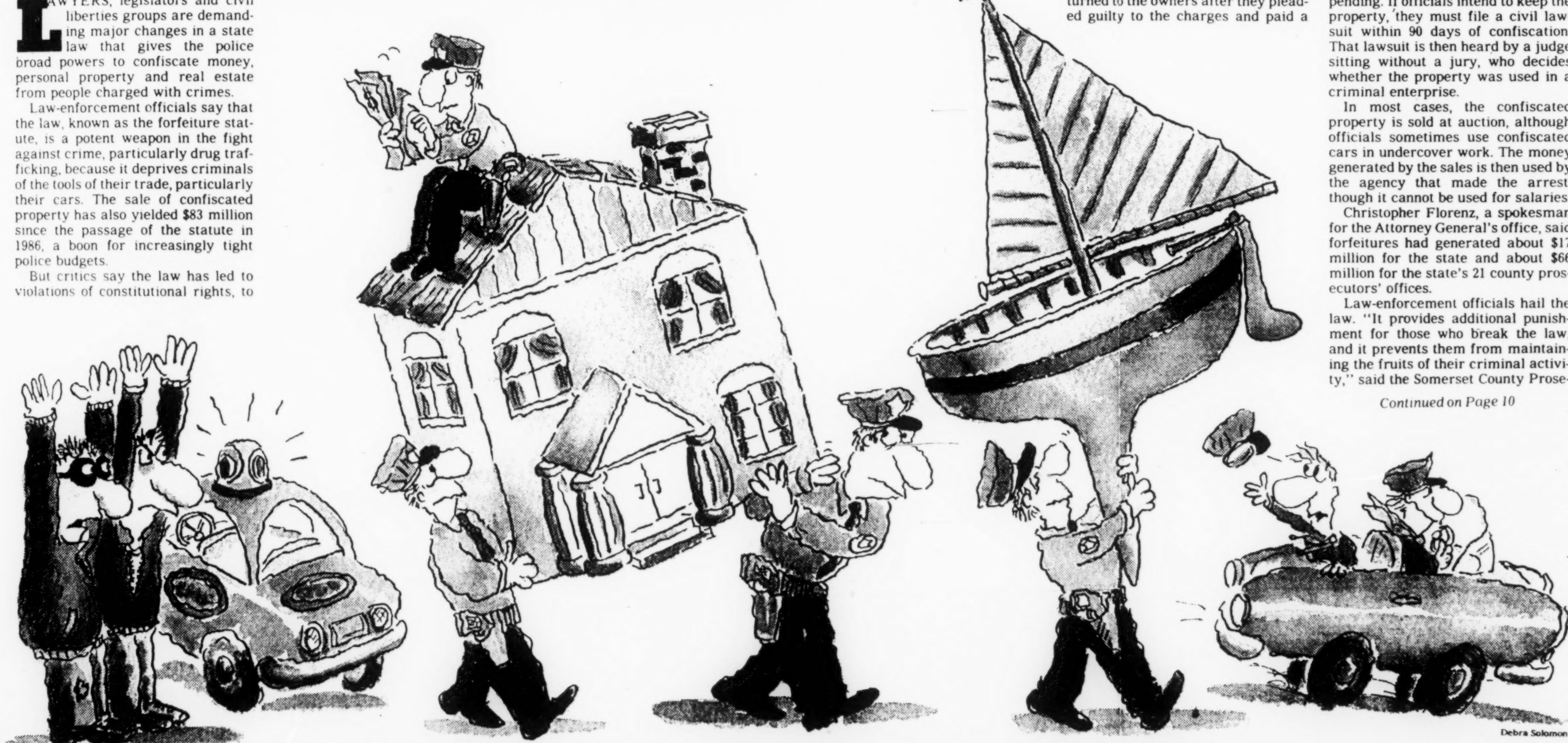
The police are allowed to confiscate property immediately, Mr. Winter said, to prevent it from being disposed of while the criminal case is pending. If officials intend to keep the property, they must file a civil lawsuit within 90 days of confiscation. That lawsuit is then heard by a judge sitting without a jury, who decides whether the property was used in a criminal enterprise.

In most cases, the confiscated property is sold at auction, although officials sometimes use confiscated cars in undercover work. The money generated by the sales is then used by the agency that made the arrest, though it cannot be used for salaries.

Christopher Florenz, a spokesman for the Attorney General's office, said forfeitures had generated about \$17 million for the state and about \$66 million for the state's 21 county prosecutors' offices.

Law-enforcement officials hail the law. "It provides additional punishment for those who break the law, and it prevents them from maintaining the fruits of their criminal activity," said the Somerset County Prose-

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Protests Mounting On Police Confiscations

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cutor, Nicholas L. Bissell Jr.

Mr. Bissell was a central figure in a recent forfeiture that has increased criticism of the 1986 statute.

In that case, a Somerset County insurance agent, James Guiffre, was arrested in his home on charges of possession of a half-ounce of cocaine. Within 26 hours of the arrest, after learning that he could lose his house to forfeiture, he entered into a plea agreement with the prosecutor's office. Mr. Guiffre agreed to become an informant in another drug case and to transfer title to two vacant lots he owned in Raritan Township to Somerset County.

Two years earlier, Mr. Guiffre had paid \$174,000 for the lots; they were sold at auction by the county for \$20,000.

Civil Suit Filed

Last May, Mr. Guiffre filed a Federal civil suit against Somerset County, Mr. Bissell and others for damages resulting from the transaction. He said he had been under duress when he entered into the plea agreement with the prosecutor's office. The suit is still pending.

The State Attorney General's office has investigated the Guiffre case and concluded that Mr. Bissell broke no laws. But critics of the forfeiture statute have pointed to the incident — and Mr. Bissell's belief that forfeiture provides "additional punishment" for lawbreakers — as evidence of major flaws in the forfeiture law.

"It indirectly enhances penalties enormously," said Eric Neisser, a professor of constitutional law at the Rutgers University Law School in Newark. He offered an example.

A person caught smoking marijuana outside his or her car, Mr. Neisser said, would ordinarily be subject to a minimal fine. But if the same person had been caught doing the same thing inside the car, the authorities could legally confiscate the car.

"Instead of a \$100 fine, you have a \$5,000 car seized," he said. And that, he added, gives the police a far more powerful bargaining tool than the fines and penalties the Legislature has decided are appropriate for such a crime.

"You let the cops keep the car, and you can stay out of jail," he said, referring to the reasoning a typical defendant might use when attempting to plea-bargain in such a case. "But that's an inappropriate penalty and an inappropriate pressure, and I don't think the public is aware of it."

An even more offensive situation occurs, he said, when the confiscated property belongs to someone else.

"If a kid borrows his dad's car for

the night," Mr. Neisser asked, "should the father lose his car because the kid got caught smoking marijuana in it?"

Prosecutors say that while such situations are possible, they do not occur very often. And when they do, it is usually because the owner of the car was involved in the crime that led to the seizure.

Donald A. Regan of Montvale claims to be one of the exceptions. Three years ago he gave an acquaintance a ride into Manhattan. When they returned to New Jersey, agents of the Bergen County Narcotics Task Force stopped them. Drugs were found in the car and on Mr. Regan's passenger. Both men were arrested.

Mr. Regan insisted that he had no knowledge of the drugs, but the police confiscated his car.

The other man pleaded guilty to drug possession, and all charges against Mr. Regan were dismissed. But Mr. Regan is still fighting to get back his car.

"I've just gotten the runaround," Mr. Regan said. "My case is still in limbo."

John J. Fahy, the Bergen County Prosecutor, said that even though the charges against Mr. Regan were dismissed, officials were proceeding with the forfeiture action because of statements made by Mr. Regan's co-defendant implicating Mr. Regan in the crime and because the police had followed the men to an area of Manhattan known as a place to buy drugs.

Illustrates Objections

The case illustrates several objections leveled at the forfeiture law. For one thing, said Marsha Wenk, a staff lawyer for the New Jersey chapter of the American Civil Liberties Union, it demonstrates how the burden of proof in a forfeiture case shifts from the state to the defendant.

In a criminal case, Ms. Wenk said, the state has to prove that the defendant committed the crime. But in a forfeiture case, which is a civil case, the tables are turned and the defendant must convince a judge of his innocence to get back his property.

Mr. Regan, for example, has to prove that he had no knowledge of the presence of drugs in his car. "And it's very difficult to prove the absence of knowledge," Ms. Wenk said.

The Regan case also casts light on procedures that Ms. Wenk said were probably in violation of the due process clause of the United States Constitution. "The seizure is based simply on a police officer's belief that the property was used in a crime," she said. "That's not a standard that we use in any other setting."

Ms. Wenk also criticized the length

of time during which people like Mr. Regan must do without their property. Law-enforcement officials have 90 days in which to file a forfeiture action, and once that is filed, the civil hearing before the judge to decide whether the property should be returned is usually not held until the conclusion of the underlying criminal case. Meanwhile, the confiscated



Debra Solomon

of time during which people like Mr. Regan must do without their property. Law-enforcement officials have 90 days in which to file a forfeiture action, and once that is filed, the civil hearing before the judge to decide whether the property should be returned is usually not held until the conclusion of the underlying criminal case. Meanwhile, the confiscated

property is taken away and there may never even be a conviction," Mr. Garrett said. "It's a way for the police to avoid having to go through a criminal trial. Instead, they can say, 'Just give us the car and we'll drop all the charges,' and they're allowed to do that."

New Regulations Expected

Mr. Winter, of the state's Division of Criminal Justice, said he expected new regulations about the enforcement of the forfeiture law to be proposed within the next couple of weeks. He declined to be specific as to the nature of the proposed changes.

The state's prosecutors, however, say the law is working nicely just the way it is.

"We do a lot of forfeiture here," said John Kaye, the Monmouth County Prosecutor. In an average year, Mr. Kaye said, his office confiscates about 300 automobiles, which are then sold at public auction. "We also take a couple of boats and a good bit of cash."